

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 116 of 1996

in

SPECIAL CIVIL APPLICATION NO 5536 of 1991

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

and

Hon'ble MR.JUSTICE J.M.PANCHAL

- 1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

MUKESH R MEHTA

Versus

DABHOI NAGARPALIKA

Appearance:

MR TR MISHRA for Appellant

MR SV PARMAR for Respondent No. 1

UNSERVED-REFUSED (N) for Respondent No. 2

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and

Date of decision: 8/08/2000

C.A.V.JUDGMENT : (Per : Panchal, J.)

This appeal filed under Clause 15 of the Letters Patent, is directed against judgment dated December 22, 1995 rendered by the learned Single Judge in Special Civil Application No. 5536/91, by which prayer made by the appellant, who is daily wage operator, to direct the respondents to grant pay-scale of Rs. 950-1500 and to regularise his services, is rejected.

2. The appellant was appointed on April 22, 1986 as daily wage operator in the Water Works Department of respondent- Nagarpalika. An advertisement dated May 3, 1991 was issued for recruitment to the post of operator. In response to the said advertisement, the appellant submitted application dated May 8, 1991. His case was that though he was selected for the said post, the respondent-Nagarpalika had ignored recommendation made by the Selection Committee and had not offered him posting. According to the appellant, he was discharging duties since 1986 and was, therefore, entitled to pay-scale of Rs. 950-1500. It was also claimed by the appellant that the respondent had published a seniority list on August 14, 1991, wherein his name was mentioned at serial no.2. What was emphasised was that as there were vacancies, his services ought to have been regularised by the respondents. Under the circumstances, the appellant filed Special Civil Application No. 5536/91 and prayed the Court to direct the respondents to grant pay-scale of Rs. 950-1500 to him as well as to regularise his services.

3. An affidavit-in-reply was filed by the Chief Officer of respondent-Nagarpalika controverting the averments made in the petition. It was stated in the reply that the recommendations of the Selection Committee were not approved by the general body of the Nagarpalika vide its Resolution No.44, dated August 17, 1991 and, therefore, it was wrong to contend that the appellant was selected after following due procedure. It was also emphasised in the reply that the appellant was not selected for the post of operator as required by Dabhoi Municipality Recruitment and Conditions of Service of Employees Rules as sanctioned by the Director of Municipalities, Gujarat State, Ahmedabad under section 271 of the Gujarat Municipalities Act, 1963 and,

therefore, the appellant was not entitled to the relief of regularisation. According to the respondents, the appellant was employed purely on temporary basis and was, therefore, not entitled to the reliefs claimed in the petition.

4. The learned Single Judge was of the view that the appellant had concealed the fact that he had taken the chance for his selection before the Selection Committee, but was not selected and, therefore, the petition was liable to be dismissed. In view of this conclusion, the learned Single Judge dismissed the petition by judgment dated December 22, 1995, giving rise to the present appeal.

5. Mr. T.R.Mishra, learned counsel for the appellant submitted that Narendrakumar R.Purani and two others, who were appointed as operators, had also filed Special Civil Applications No.6625/91, 6496/91 & 5379/92 respectively, wherein similar reliefs as were claimed by the present appellant in Special Civil Application No. 5536/91, were claimed and as those three employees have been regularised in service in terms of settlement which was arrived at between them and the respondentsNagarpalika, services of the appellant should be regularised from the date of his initial appointment so as to enable the appellant to have retiral benefits like pension, gratuity etc.

6. Mr. S.V.Parmar, learned counsel for the respondents-Nagarpalika contended that as the appellant was not appointed on the post of operator in terms of service rules, the respondent- Nagarpalika cannot agree to regularise services of the appellant with retrospective date, but the Nagarpalika is ready and willing to grant benefits to the appellant as were given to three persons with whom settlement was arrived at by the respondent-Nagarpalika.

7. We have heard the learned counsel for the parties and taken into consideration the record of the case. The appellant probably was not aware of General Body Resolution No.44, dated August 17, 1991 and had, therefore, made an averment in the petition that he was selected for the post of operator. However, as observed earlier, General Body of the Nagarpalika had not accepted the recommendations of the Selection Committee for the reasons recorded in the said resolution. Under the circumstances, we are of the opinion that the learned Single Judge was not justified in dismissing the petition on the main ground that material facts were concealed by

the appellant. However, the fact remains that the appellant was not selected for the post of operator, nor was he appointed on the said post as required by the recruitment rules. Therefore, his claim to treat him differently from others and to grant regularisation with back date so as to enable him to enjoy retiral benefits, cannot be accepted. It is not in dispute that three other employees had also filed petitions claiming similar reliefs as were claimed by the present appellant in Special Civil Application No. 5536/91 and that respondent- Nagarpalika had entered into a compromise with them and granted certain benefits. The settlement arrived at between the respondent and the three employees is on the record of the appeal at page 73. We are, therefore, of the opinion that interest of justice would be served if the respondent- Nagarpalika is directed to accord similar benefits to the appellant as were granted to three other petitioners.

For the foregoing reasons, the appeal partly succeeds. The respondent-Nagarpalika is directed to absorb the appellant Mukesh R.Mehta in present employment in the service of the Nagarpalika as an operator in Water Works Department on de-novo basis with effect from 1.12.1999. The appellant shall not be entitled to any monetary benefits in any manner whatsoever. The directions issued in this appeal shall be implemented by the respondent-Nagarpalika as early as possible and preferably within two months from the date of receipt of the writ. The appeal accordingly stands disposed of, with no order as to costs.

(D.M.Dharmadhikari,C.J.)

(J.M. Panchal, J.)

(patel)